

CONNECTICUT LEGAL RIGHTS PROJECT, INC.

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Judiciary Committee

Testimony of Kirk W. Lowry in support of S.B. 951, An Act Concerning the Appointment of a Guardian Ad Litem for a Person Who is Subject to a Conservatorship Proceeding or a Proceeding Concerning the Administration of Treatment for a Psychiatric Disability

I am the Legal Director of the Connecticut Legal Rights Project, Inc. (CLRP) a statewide nonprofit organization that provides free legal services to low income adults with psychiatric disabilities.

The purpose of this bill is to prohibit the appointment of a guardian ad litem in initial conservatorship and involuntary medication hearings where competency is the primary issue to be determined. Appointing a guardian ad litem is a judgment that the person is unable to act in their own best interest, and therefore runs counter to the presumption of competency and pre-judges the respondent.

A guardian ad litem is a person, usually an attorney, appointed by the probate court to represent and protect the interests of a legally incompetent person in a particular matter. (Probate Rule 1.1.09) The purpose of appointing a guardian ad litem is to protect the interests of persons who are legally incompetent to represent themselves in a probate proceeding. Minors are always incompetent to represent themselves as a matter of law by the mere fact of their age. S.B. 951 does not pertain to minors. People with psychiatric disabilities are presumed to be competent until a petitioner proves by clear and convincing evidence that the person needs a conservator. (General Statutes § 45a-650(f); *Kirwin v. State*, 168 Conn. 498, 503 (1975); *Ridgeway v. Ridgeway*, 180 Conn. 533, 539 (1980).)

A guardian ad litem is generally appointed by the probate court, paid by the

probate court, investigates on behalf of the probate court, reports to the probate court and is discharged only by the probate court. A privately retained or court-appointed attorney represents the respondent or conserved person and their interests only. The role of a guardian ad litem is to substitute their judgment for that of a person with a psychiatric disability and determine what is in their best interest.

The legal obligation of an attorney representing a person with a disability is to normalize the relationship (Rules of Professional Conduct 1.14), determine and follow their stated objectives of the representation (Rule 1.2), be completely loyal to them (Rule 1.7), and zealously advocate their cause (Preamble). The rule of law, the adversary system, and the separate and competing interests and duties of petitioner, respondent and court provide due process of law and outcomes generally in accord with the facts and the law. An attorney should advise a client about the legal options available to the client and the possible consequences of each option, but the attorney should not substitute judgment or determine their best interests.

CLRP supports S.B. 951 because it recognizes the rights of people with disabilities, respects the presumption of competency in Connecticut law, upholds the traditional adversarial system of justice, and preserves the discretion of Probate Judges to appoint a guardian ad litem in limited circumstances. S.B. 951 prohibits the appointment of a guardian ad litem when such an appointment runs counter to the presumption of competency in involuntary medication hearings and conservatorship hearings. Certainly, a guardian ad litem is never a necessary person in either of these hearings. The respondents have court-appointed counsel and treaters testify and are able to obtain counsel if needed. If a conserved person is subject to an involuntary medication hearing or a conservatorship proceeding, they will have both an attorney and a conservator and therefore, guardian ad litem will not be necessary.

S.B. 951 appropriately limits the discretion of probate judges to appoint a guardian ad litem to situations where it is necessary and appropriate.